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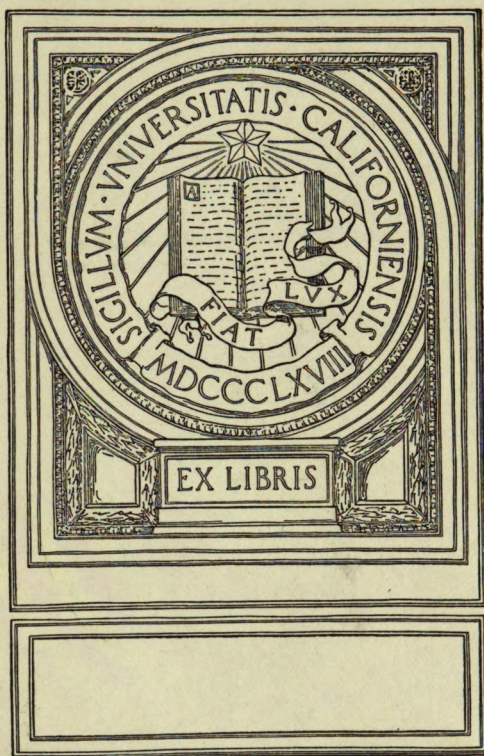
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A SKETCH
—
OF THE
CLAIMS OF SUNDRY AMERICAN CITIZENS
ON THE
GOVERNMENT OF THE UNITED STATES
FOR INDEMNITY,
OR DEPREDACTIONS COMMITTED ON THEIR PROPERTY BY THE FRENCH
PRIOR TO THE 30th SEPTEMBER, 1800,
WHICH WERE ACKNOWLEDGED BY FRANCE,
AND
VOLUNTARILY SURRENDERED TO HER BY THE UNITED STATES, FOR A VALUABLE NATIONAL
CONSIDERATION, IN THE CONVENTION OF THAT DATE.

By JAMES H. CAUSTEN.

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"The claims from which France was released were admitted by France, and the release was for a valuable consideration in a correspondent release of the United States from certain claims upon them."—MR. MADISON, *Secretary of State*.

"Nor shall private property be taken for public use, without just compensation."
CONSTITUTION OF THE UNITED STATES.

WASHINGTON, D. C.

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1871.

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FRENCH SPOILIATIONS PRIOR TO 1800.

The distinctive character of these Spoiliations is set forth in an official report to the President by our Secretary of State, January 18, 1799, in citing an official report of the Commissioners of France at Saint Domingo to the Minister of Marine, in February, 1797, and printed in the Journal of the Executive Directory, viz :

"That, having found no resource in finance, and knowing the unfriendly disposition of the Americans, and to avoid perishing in distress, they had armed for cruising ; and that, already, eighty-seven cruisers were at sea ; and that for three months preceding, the administration had subsisted and individuals been enriched, with the proceeds of those prizes. That the decree of the 2d of July was not known to them until five months afterwards. But (say they) the shocking conduct of the Americans, and the *indirect* knowledge of the *intentions* of our Government, made it our duty to order reprisals, even before we had received the official notice of the decree ; they felicitate themselves that American vessels were daily taken ; and declare that they had learnt, by divers persons from the Continent, that the Americans were perfidious, corrupt, the friends of England, and that, therefore, their vessels no longer entered the French ports, unless carried in by force.

"After this recital before the Council of Five Hundred, Pastoret makes the following remarkable reflections :

"On reading this letter, we should think that we had been dreaming ; that we had been transported into a savage country, where men, still ignorant of the empire of morals and of laws, commit crimes without shame and without remorse, and applaud themselves for their robberies, as Paulus Emilius or Cato would have praised themselves for an eminent service rendered to their country. Cruisers armed against a friendly nation ! Reprisals when it is we ourselves who attack ! Reprisals against a nation that has not taken a single vessel of ours ! Riches acquired by the confiscation of the ships of a people to whom we are united by treaties, and whom no declaration of war had separated from us. The whole discourse of the agents may be reduced to these few words :

"Having nothing wherewith to buy, I seize ; I make myself amends for the property which I want, by the piracy which enriches me ; and then I slander those whom I have pillaged. This is robbery, justified by selfishness and calumny."

See Document 102, No. 293 in Senate Document of 1st session 19th Congress, being a message from the President to the Senate of May 20, 1826, with the report of the Secretary of State, Mr. Clay, and a mass of documents. As I shall frequently refer to it, it will be as document 102, and number of the particular document therein.

The conduct and vindictive spirit thus displayed at the port of Saint Domingo was, in like manner of ferocity practised, not only in all the other French and Spanish Colonies, but also in

their respective seaports in Europe and elsewhere; and resulted in the capture of more than fifteen hundred American vessels—not one of which was legally captured, as the provisions of our commercial treaty with France of 1778, will clearly establish.

On referring to said treaty, the reader will be surprised at the magnanimity and justice that dictated it; and that the purity of purpose and profound wisdom it manifests, remain a monument of excellence, without a rival, to this day. The material stipulations are—

"Article 6. Vessels and effects belonging to citizens of the United States, to be protected in French ports and by French war vessels whilst in company.

"Article 13. Vessels with contraband goods—if the contraband goods be delivered to the captor, 'he, shall forthwith discharge the ship, and not hinder her by any means, freely to prosecute the voyage on which she is bound.'

"Article 17. Shall sail with their ships with all security, no distinction being made who are the owners of their lading, from one enemy port to any other enemy port, that free ships give freedom to goods on board, even of enemy's goods, and so of persons.

"Article 27. In order to avoid any disorder to merchant ships met at sea by armed vessels, the latter 'shall remain out of cannon shot, and may enter her by two or three men only, and when her passport shall be exhibited, she shall be at liberty to pursue her voyage, so as it shall not be lawful to molest or search her in any manner, or to give her chase or force her to quit her intended course.'

"Article 28. Cargoes once put on board, not subject to further visitation."—*Laws U. States, vol. 1, p. 74.*

It is thus clearly established that France had no right to capture American vessels, *under any circumstances whatever*; and that all the fifteen hundred vessels she did capture, as before mentioned, were illegal under said treaty; and no less illegal under international law.

The reader would naturally inquire, if France, our acknowledged kind protector, friend, and ally, had no right to capture American vessels, why did she do so?

This question must be answered, and the proper time to answer it has arrived. Although more than forty reports of committees of the two Houses of Congress have been made—all in favor of the claimants, not one of them has ventured to answer this question in full. The reader will discover the motive for this silence on his further reading.

The early French captures, being provision vessels were paid for, and assurance given for future like payments, but proved illusory, and were speedily followed by vindictive vengeance, indiscriminate capture, and instant condemnation.

These early captures, in 1793, were made under absolute necessity; the crops in France having failed, a frightful civil war

raged in the very bosom of France, and all Europe in arms against her, as punishment for beheading her King—to starve the people of France was the diabolical purpose:—there was another no less prominent purpose, viz: Crowned heads against Republics.

The wonderful coalition against France, made in the heat of active war between England and France, was formed in about six months, in which time England had contracted twenty-three separate treaties with allies; the character of which is seen in that one with Prussia, of July 14, 1793, the 3d article of which is as follows:

“ARTICLE 3. The high contracting parties having already taken the resolution to shut all their ports against French ships, and not to permit the exportation, in any cases, from their said ports for France, of any military or naval stores, or corn, grain, salt, meat, or other provisions, they reciprocally engage to continue these measures, and promise to employ all other means which shall be in their power, for injuring the commerce of France, and for bringing her by such means to just conditions of peace.”

The following instructions were given by Russia to her Admiral Tebithe Goff, conformably to her treaty with England, of March, 1793, viz:

“We have ordered a fleet of twenty-five sail of the line and frigates, to be equipped for four months and under your command. The principal duty of our naval armament consists in what follows:

“We are bound according to our stipulations with His Majesty, the King of Great Britain, to endeavor to prevent these French, who persist in their rebellion, from receiving any supplies of which they may be in need. The hostile measures employed against them, are not strictly conformable to the natural laws of war, when it unfortunately takes place between nations under lawful Government; but as these measures are taken against those ardent villains, who have overturned all duties observed towards God, the laws, and the Government, who have even gone so far as to take the life of their own sovereign—the means of punishing those villains ought in justice to be employed in such a manner as to accelerate and insure success in so salutary an affair.

“We have made representations to the Courts of Sweden and Denmark, but our just demands have not been satisfactorily answered; wherefore, we have declared to them, that we cannot see with indifference provisions or stores sent to France, which serve to nourish the rebels.

“By this you will clearly see our will and our intentions, and we order you to seize all those French vessels you may meet with, and to send back to their own ports all neutral vessels bound for France.”

The British orders in council went much further than the above, and authorized the *capture* of neutral vessels with provisions bound to France. Sweden and Denmark remonstrated successfully against said orders in council. The United States also remonstrated, but in vain; and more aggressive other like orders soon followed.

The American vessels with provisions bound for and to relieve starving France, to the number of 478 (as reported in Trumbull's *Reminiscences*,) were captured and their cargoes confiscated by

the British, the vessels being at first released, but thereafter confiscated.

The provisions so captured glutted the British market so far that a barrel of flour would only command eight dollars there, while in a French port it would command forty dollars.

In the mean time, open war had been declared by both England and France, each against the other; when the capture of American vessels was greatly increased by each of them. The losses of our merchants were very great, and our Government greatly excited, not only because of the great loss of property, but also at the loss of revenue from imports; and above all, the imminent hazard of being drawn into the war then in full force between England and France.

On the 22d of April, 1793, President Washington, of his own impulse, issued a proclamation of neutrality, which states:

"Whereas it appears that a state of war exists between Austria, Prussia, Sardinia, Great Britain, and the United Netherlands, of the one part, and France on the other; and the duty and interest of the United States require that they should with sincerity and good faith adopt and pursue a conduct friendly and impartial toward the belligerent Powers." Doc. 102, No. 150.

While no man will question the purity of motive that dictated this proclamation, no man can with truth deny that it was the starting point of all the difficulties we had with France that followed in its train. Its first effect in our own country was, to divide our people into two great political parties, perhaps of equal numbers and activity, which disturbed our councils for half a century, and is not extinguished to this day. To judge of its true character, the reader should bear in mind that it was made during a mighty war, in which all the numerous parties to it were our friends, except and against our ally France, then in a starving condition. The said proclamation directs "a conduct *friendly* and *impartial* toward the belligerent powers;" but not a saving word in favor of the *exclusive rights* due to our ally France by our treaty with her.

How far the conduct just prescribed conflicts with our treaties with France, will appear on citing their provisions. First, the treaty of alliance of 1778:

"ARTICLE I. In case of war between France and Great Britain, the cause to be common.

"ARTICLE II. The two parties guarantee mutually from the present time, *and forever*, against all other powers, to wit, the United States to His most Christian Majesty, the present possessions of the Crown of France in America, as well as those which it may acquire by the future treaty of peace." Laws U. States, Vol 1, p. 95.

The French Islands were captured by the English without our resistance or even remonstrance, but directly the contrary; we permitted the English to obtain in our ports military supplies, including our vessels to transport them to the Islands where they were successfully employed in the capture; of this France complained bitterly.

Our guarantee of these Islands being *forever* would probably imply an obligation to redeem them at whatever cost, and then resume the guarantee.

On many occasions the British Minister complained of our construction or application of our treaties with France; which induced Mr. Jefferson to address a letter to Mr. Madison, dated April 3, 1794, in which is the following :

* * * "As to the guarantee of the French Islands, whatever doubts may be entertained of the moment at which we ought to interpose, yet I have no doubt that we ought to interpose at a proper time, and declare both to England and France, that these Islands are to rest with France, and that we will make a common cause with the latter for that object." Jefferson's Works, Vol 3, p. 303.

On the 18th September, 1793, Mr. Genet, the French Minister, complained to our Secretary of State, as follows :

"That the Secretary of War, to whom I communicated the wish of our Government of the Windward Islands, to receive promptly some fire arms and some cannon, which might put into a state of defence possessions guaranteed by the United States, had the front to answer me, with an ironical carelessness, that the principles established by the President did not permit him to lend us so much as a pistol."

The President's message to Congress of Feb'y 4, 1791, states that authority had been given to hold informally conferences with the British Ministers, to learn their disposition as to the entering into a commercial treaty with the United States. Mr. Morris had charge of this duty, and in his letter to the President, dated London, Sept. 18, 1790, after detailing much conversation with His Majesty's principal Secretary of State, he adds :

"I proceeded therefore a little further and prayed him to consider that, in a war between Great Britain and the House of Bourbon (a thing which must happen at some time) *we can give the West India Islands to whom we please, without engaging in the war ourselves; and our conduct must be governed by our interest.* He acknowledged that this was naturally to be expected; and it seemed from his manner that the same thing had been represented before, but not in such strong colors." Waite's American State Papers, vol. 10, p. 97. (Confidential.)

On the 6th of May, 1794, Mr. John Jay, while Secretary of State, had been appointed Minister Extraordinary to Great Britain—his instructions were very extended and minute and contained the following :

"Provisions never to be contraband, except in the strongest possible case, as the blockade of a port, or if attainable, by abolishing contraband altogether.

"You may discuss the sale of prizes in our ports while we are neutral; and this, perhaps, may be added to the considerations which we have to give, besides those of reciprocity—Doc. 102, No. 63."

Before, while he was negotiating a treaty, and after it was concluded, the British orders in council to seize our provision vessels bound to starving France, were in full operation. The treaty he made, granted *the right to so capture* on payment of ten per cent. advance on the invoice cost of the cargoes, but this advance was soon overruled by other orders in council, which directed the capture and confiscation.

This treaty contained 29 articles, most of which were unsatisfactory to the United States, but, after several modifications by negotiation, was eventually ratified by an extreme close vote in each House of Congress. Two only of its articles will be here referred to, viz :

"ARTICLE 18. Legalizes the capture of provision vessels on certain conditions—which were not complied with.

"ARTICLE 25. Prizes made by either party shall be free to enter the ports of the other.

"No shelter or refuge shall be given in their ports to such as have made a prize upon the subjects or citizens of either of the said parties."

With regard to said 18th article, the following will suffice, viz : Our Secretary of State, Mr. Randolph, on the 14th July, 1795, in his letter to Mr. Morris, our Minister at Paris, says :

"The treaty of Mr. Jay's is not yet ratified by the President, nor will it be ratified, I believe, until it returns from England, if then. * * * The late British order for seizing provisions is a weighty obstacle to a ratification. I do not suppose that such an attempt to starve France will be countenanced." Doc. 102, No. 61.

And, in the instructions to our Minister to England, Mr. John Q. Adams, who was charged with the exchange of the ratification of said treaty, is the following :

"But, if after every precedent effort, you find that it (the British orders to capture provision vessels) cannot be removed, its continuance is not to be an obstacle to the exchange of ratifications."—Doc. 102, No. 206.

The 25th article of the treaty need not be here remarked on, since it is so clear and complete a violation of the letter and spirit of our treaty with France, that no man can mistake it. Our treaty with France gave her the *exclusive* use of our ports, to the *exclusion* of all other powers—and here, while our ally France and England are engaged in vindictive war upon each other, we deliberately take from France her exclusive right, and without consideration, bestow it on her enemy, during war. England had already captured all the French Islands we had guaranteed, with-

out aid or remonstrance on our part; and now, by this treaty with her enemy, France was deprived of all refuge for her war vessels and their prizes in this hemisphere.

Mr. Hammond, the British Minister, had made frequent complaint against the use of our ports by the French vessels of war; to which Mr. Jefferson responded on the 9th September, 1793, as follows:

"And though the admission of the prizes and privateers of France is exclusive, yet it is the effect of treaty made a long ago for valuable considerations, not with a view to present circumstances, nor against any nation in particular, but all in general; and may, therefore, be faithfully observed without offence to any; and we mean faithfully to observe it."—*Doc. 102, No. 133.*

Mr. Jefferson here manifested the true spirit in maintaining our treaty with France, but, how far he was entitled to commendation for so doing, will be seen in the following letter from him to the same British Minister, of only four days prior date, viz: September 5, 1793:

"I am honored with yours of August 30th; mine of the 7th of same month assured you that measures were taking for excluding from all further asylum in our ports [French] vessels armed in them to cruise on nations with which we were at peace, and for the restoration of the prizes the *Lovely Lass*, *Prince William Henry*, and the *Jane of Dublin*; and that should the measures for restoration fail in their effect, the President considered it as incumbent on the United States to make compensation for the vessels."—*Doc. 102, No. 131.*

* * * *

The exclusion here proffered is of French armed vessels and their prizes, which France had freely enjoyed with our entire assent, and which France asserted was her right by treaty.

The British Government regarded Mr. Jefferson's letter last cited, of so great importance as to cause it to be incorporated into and made part of Mr. Jay's treaty; in virtue of which, she claimed and received a large indemnity from the United States. The French Government complained of said letter as being unfriendly to it.

Under Mr. Jay's treaty the British Government claimed and received, at the cost of the United States, a further indemnity of 600,000 pounds sterling, about three millions of dollars, for impeded debts due to her subjects during our Revolutionary war.

And under the same treaty awards were made and paid by the British Government to the merchants of the United States, as indemnity for our captured vessels, to the amount of \$11,650,000, as stated in the report of Mr. Trumbull, one of the American Commissioners, in his volume of *Reminiscences*, page 238.

There were strange things done by our Government in those

days; but we must not overlook our then infancy and inexperience, while threatened on every side with surrounding difficulties, which led Mr. Jefferson, as is understood, to withdraw from the then Administration.

Soon after Mr. Jay's treaty was ratified our Secretary of State, Mr. Pickering, in his report to the President of July 15, 1798, says:

"Mr. Adet [the French Minister] asks whether the President has caused orders to be given to prevent the sale of prizes conducted into the ports of the United States, by vessels of the Republic, or privateers armed under its authority. On this, I have the honor to inform you, that the 26th article of the British treaty, Mr. Jay's, having explicitly forbidden the arming of [French] privateers, and the selling of their prizes in the ports of the United States, the Secretary of the Treasury prepared, as a matter of course, circular letters to the collector to conform to the restriction contained in that [article of the British treaty] as the law of the land. This was the more necessary, *as formerly the collectors were instructed to admit to an entry and sale the prizes brought into our ports*" [by the French.]

The publication of Mr. Jay's treaty, in 1796, produced great excitement throughout our whole country. Congress by resolution called on the President for a copy of the instructions to Mr. Jay, which was voted after a long and heated discussion. The President refused to furnish a copy, *most happily*, as its publicity would, most probably, have led France to instantly declare war against us. The instructions contained, as before mentioned, the proffer to England of the exclusive use of our ports, notwithstanding our previous pledge of them to France.

On the 12th November, 1794, our Secretary of State, Mr. Randolph, thus wrote to Mr. Jay:

"If the prohibition to sell French prizes should commence sooner than the termination of the war [then existing between England and France] we shall be placed in very great difficulties; and I am pleased to observe that you are impressed with the force of this idea."—Doc. 102, No. 64.

remark The promulgation of Mr. Jay's treaty, in 1796, opened instantly the vials of wrath and vengeance of France against the United States. She called us perfidious, and accused us of having joined the great coalition to starve the people of France, and, in consequence thereof, she ordered the ocean to be ~~filled~~ of American vessels by privateers commissioned for that object, and loaned her public vessels to privateersmen for a share of the booty they could thus acquire. As before mentioned, more than fifteen hundred American vessels were thus captured, being the identical vessels for which the bill for the relief of their owners is now pending before Congress, the United States having for their own benefit bartered the aggregate claims of their owners to indem-

nity, to France, for a release of our Government from the onerous stipulations of the treaties with France, of 1778, and the incurred liabilities under them. This release of the United States cannot be computed in money, because it was inestimable; but it was at least equivalent in value to the sum of the captured vessels, and was so considered in the bargain made, which was of our own seeking, and therefore unquestionable. But the owners of said vessels never received a dollar for their vessels to this day.

At an early period, August 27, 1793, our Secretary of State, Mr. Jefferson, published the following circular letter to the merchants of the United States :

To — Gentlemen :

“ Complaint having been made to the Government of the United States, of some instances of unjustifiable vexation and spoliation on our merchant vessels by the privateers of the Powers at war, [England and France,] and it being possible that other instances may have happened of which no information has been given to the Government; I have it in charge from the President, to assure the merchants of the United States concerned in foreign commerce or navigation, that due attention will be paid to any injuries they may suffer on the high seas, or in foreign countries, contrary to the law of nations, or to existing treaties; and that, on their forwarding hither well-authenticated evidence of the same, proper proceedings will be adopted for their relief.”—Doc. 102, No. 130.

Our Government thus volunteered its agency in behalf of the claimants, and took in charge the evidence of their losses. The evidence was by it forwarded to France for collection; but, instead of collection for the claimants, was bartered to France in payment of its own debt; and the evidence of the barter was placed in the secret files of the State Department, and was so concealed for more than a quarter of a century. The evidence of loss so placed in the charge of our Government has not been restored to the claimants, nor even a record kept of that sent by it to France; nor has our Government ever accounted to the claimants for the agency so conferred on it.

It will be observed that this Government agency embraced claims against both *England and France*; they were of about equal amount; and those claims sent to England produced to the claimants, as before noted, the sum of \$11,650,000; while those sent to France produced nothing, as the whole was absorbed in payment, by barter, of the *public debt* to France.

The violent depredations of France were continued with increased violence and beyond endurance, and the United States prepared for defence, if not for open war, which appeared almost inevitable, but did not take place.

Our Government resolved on negotiation, and accordingly, on the 15th July, 1797, appointed Charles C. Pinckney, John Marshall, and Elbridge Gerry, as envoys extraordinary to the French Republic. Their instructions were voluminous, and contained the following :

"Finally, the great object of the Government being to do justice to France and her citizens, if in anything we have injured them ; to obtain justice for the multiplied injuries they have committed against us ; and *to preserve peace* ; your style and manner of proceeding will be such as shall most directly tend to secure these objects."—Doc. 102, No. 307.

France was not in a temper for reconciliation ; and the mission failed to complete anything ; they did obtain, however, during their negotiation, the following proposition, dated November 8, 1797, viz :

"There shall be named a commission of five members, agreeably to a form to be established, for the purpose of deciding upon the reclamations of the Americans relative to the prizes made on them by the French privateers.

"The American Envoys will engage that their Government shall pay the indemnifications, or the amount of the sums already decreed to American creditors of the French Republic, and those which shall be adjudged to the claimants by the Commissioners.

"This payment shall be made under the name of an advance to the French Republic, who will repay it in a time and manner to be agreed on."—Doc. 102, No. 310.

France had declared her finance exhausted by war, and therefore could not pay us promptly for the spoliations ; hence, she offered the above proposition. But the American Envoys refused to sanction it, as being beyond their instructions, but, particularly, because England would regard it as a covert aid to France during the existing war.—Doc. 102, No. 319.

Mr. Jefferson was much dissatisfied with the condition of our public affairs with England and France. In his letter of June 17, 1797, to Colonel Burr, he says :

"We have received a report that the French Directory has proposed a declaration of war against the United States to the Council of Ancients, who have rejected it. Thus we see two nations who love one another affectionately, brought, by the ill temper of their Executive Administrations, to the very brink of a necessity to imbrue their hands in the blood of each other."—Jefferson's Works, vol. 3, p. 358.

And on the 20th June, 1797, Mr. Jefferson wrote to Elbridge Gerry, who was just confirmed as one of the Envoys to France, viz :

"It was with infinite joy to me, that you were yesterday announced to the Senate as Envoy Extraordinary jointly with General Pinckney and Mr. Marshall, to the French Republic. It gives me certain assurances that there would be a preponderance in the mission sincerely disposed to be at peace with the French Government and nation. Peace is undoubtedly at present the first object of our nation. Interest and honor are also national considerations. But interest, duly weighed, is in favor of peace even at the expense of spoliations past and future ; and honor cannot now be an object. The insults and injuries committed on us by both the belligerents par-

ties, from the beginning of 1793 to this day, and still continuing, cannot be wiped off by engaging in war with one of them. Our countrymen have divided themselves by such strong affections to the French and the English, that nothing will secure us internally but a divorce from both nations."—Jefferson's Works, vol. 3, p. 359.

That mission proved a failure.

On the 22d October, 1799, a second mission to France was appointed, viz: Oliver Ellsworth, William R. Davie, and William Vans Murray, whose instructions contained, viz:

"And you know that, instead of relief, instead of justice, instead of indemnity for past wrongs, our very moderate demands have been immediately followed by new aggressions and more extended depredations; while our Ministers, seeking redress and reconciliation, have been refused a reception, treated with indignities, and finally driven from its territories.

"This conduct of the French Republic would well have justified an immediate declaration of war on the part of the United States; but desirous of maintaining peace, and still willing to leave open the door of reconciliation with France, the United States contented themselves with preparations for defence, and measures calculated to protect their commerce.

"The following points are to be considered as *ultimata*. First, that an article be inserted for establishing a Board with suitable powers, to hear and determine the claims of our citizens for the causes hereinbefore expressed, and binding on France to pay or secure payment of the sums which shall be awarded.

First, at the opening of the negotiation, you will inform the French Ministers, that the United States expect from France, as an indispensable condition of the treaty, a stipulation to make to the citizens of the United States full compensation for all losses and damages which they shall have sustained by reason of irregular or illegal captures or condemnations of their vessels or other property, under color of authority or commissions from the French Government or its agents."—Doc. 102, No. 346.

The elaborate discussions at Paris that followed extended to the 30th of September, 1800, during all which, the only point at issue was with respect to the national claim of France as to the continuous and uninterrupted operation of the treaties of 1778, and the liabilities due to France under them—the right of our citizens to indemnity for spoliations on their vessels was promptly and uniformly conceded on both sides throughout the entire negotiation. On the 11th August, 1800, the French negotiators, Messrs. Joseph Bonaparte, Fleurieu, and Roedereur thus wrote to our Envoys:

"In the first place, they will insist upon the principle already laid down in their former note, viz: that the treaties which united France with the United States are not broken; that even war could not have broken them; but that the state of misunderstanding, which has existed for some time between France and the United States, by the act of some agents, rather than the will of the respective Governments, has not been a state of war, at least on the side of France.

"If the reflections presented on this subject in the note of the French Ministers, of the 5th of the present month, suffice to lead the Ministers of the United States to the acknowledgment of the treaties, the first consequence which will result from them, and which the Ministers of France will be eager to recognize anew, is, that the parties on both sides ought to be compensated for the damages which have been mutually caused by their misunderstanding. Thus, the first proposition of the Ministers of France is, to stipulate a full and entire recognition of the treaties, and the reciprocal engagement of compensation for damages resulting on both sides from their infraction."

At the foot of that communication the French Minister presented a modified or alternative proposition, viz :

"Either the ancient treaties with the privileges resulting from priority, and the stipulation of reciprocal indemnities,

"Or a new treaty, assuring equality without indemnity."

This modified proposition greatly embarrassed the Envoys, as they were expressly forbidden to revive the old treaties in whole or in part: nor could they stipulate *equality* to France, since we had already given the *exclusive right* to Great Britain, which we could not recall.

The French Ministers were inflexible, however; and the Envoys offered, in vain, large sums of money to release us from certain articles of the old treaties—the guarantee of the French islands, and the use of our ports. The French Ministers consented to accept of ten millions of livres for the extinction of the guaranty, but declared that no consideration whatever could lead to release the United States from the use of our ports, as such would be in effect a surrender of her flag to Great Britain.

In the progress of the negotiation very many propositions on either side were discussed, all of which recognized and provided for the Spoliation claims; but the propositions of the French Commissioners uniformly insisted that the old treaties remained in full force, and should be so regarded.

This was a dead lock. The Envoys then proposed to insert in the new treaty an article that should recognize the claims on both sides, and refer their decision to a future convenient time. This proposition was accepted by the French Minister, and became the second article of the new treaty, which was afterwards concluded as a *Convention*—the second article being as follows :

"ART. 2. The Ministers Plenipotentiary of the two parties not being able to agree at present respecting the treaty of Alliance of 6th February, 1778, the treaty of Amity and Commerce of the same date, and the [Consular] Convention of November 14, 1788; nor upon the indemnities mutually due or claimed; the parties will negotiate further on these subjects at a convenient time; and until they may have agreed upon those points, the said treaties and convention shall have no operation, and the relations of the two countries shall be as follows:" [Here follows articles to No. 29.]—Laws U. S., vol. 1, p. 115.

That second article when ratified by the First Consul, as was promptly done, was virtually a French National Bond pledged in favor of the Spoliation claims, and although not specified as to amount, may be regarded as a liquidated acknowledged debt, since the French negotiators had uniformly acknowledged the liability of France for them.

That bond was placed in charge of our Government, *as trustee* of the claimants, for collection. It was indeed a long bond, but that did not lessen its validity, nor lessen the evidence of its validity, to wit: the oft repeated admission of the French negotiators, which is matter of permanent record.

The United States, without the assent or knowledge of the claimants, paid their public debt to France with said bond. Can any one doubt, therefore, as to which of the two Governments is now responsible for the individual claims of our citizens thus taken for the public use? The thus taking and use of the private property in said bond was, nevertheless, an act of profound wisdom. A favorable event occurred which enabled the United States to pay her debt to France, and they did so, by the use of said bond, at the sole cost of the claimants.

On the convention being laid before the Senate they struck out the second article without stating the reason for so doing, and sent it back to Paris for confirmation. There is nothing extant to show the motive for striking out that article, but it is self-evident that it was to release the United States, so earnestly and long desired, from our treaty engagements with France, that second article being the only ligament that held us to them.

On the amended convention being laid before the First Consul, he expressed surprise and dissatisfaction, as the second article was inserted at the desire of the American Envoys, his Chief Minister, Talleyrand, having reported to him, however, that the simple nullification of that article would not only lose the old treaties to France, but would leave her still liable for the American Spoliation claims under international law.

On being so advised, the First Consul ratified the modified convention in the following manner:

"Bonaparte, First Consul, in the name of the French people * * * approves the above Convention in all and each of the articles. * * * The Government of the United States having added to its ratification, that the Convention shall be in force for the space of eight years, and having omitted the second article, the Government of the French Republic consents to accept, ratify, and confirm the above Convention, with the addition, importing that the Convention shall be in force for the space of eight years, and with the retrenchment of the second article, *Provided, that by this retrenchment the two States renounce the respective pretensions which are the object of said article.*" *Laws U. S., Vol. 1, p. 133.*

This conditional ratification being submitted to the Senate, was confirmed as "*fully ratified*;" and was so returned to the President, and by his proclamation was promulgated on the 31st July, 1801, as the supreme law of the land; the original convention

was confirmed and signed by John Adams, President, and John Marshall, Secretary of State, and the final ratification was signed by Thomas Jefferson, President, and James Madison, Secretary of State.—[Laws of United States, vol. 1, p. 132-4.]

If the Senate had not ratified the condition of the First Consul the Spoliation claims would have remained as due from France, and been maintained against her by both the old treaties and the law of nations.

And if the United States could have obtained from France a simple release from or nullification of the old treaties—as they most earnestly sought—it could only operate prospectively from its date, and thus have left the spoliation claims as still due from France.

But when the mutual claims were *indissolubly united*, the French national claim on one side, and the spoliation claims of our citizens on the other side; and our Government, in order to rid itself of said French national claim, surrendered or bartered the private claims of our citizens, as a consideration therefor, who can doubt that it is the very case for which the Constitution provides, that property of individuals “shall not be taken for the public use without *just* compensation.”

The value of the spoliation claims was infinitely less than that of the old treaties; nevertheless, they were considered and treated in the bargain as of equal value by the two Governments. This barter was made by the Senate (not by our Envoys) first, in striking out the second article of the convention, and then, in accepting the First Consul's explanatory condition thereto. It was the Senate and President Jefferson, (and his Secretary of State, Mr. Madison,) the treaty-making power, that consummated the bargain.

Mr. Jefferson, in his letter of December 18, 1801, to Mr. R. R. Livingston, our Minister at Paris, says:

“I am authorized to say that the President does not regard the declaratory clause [of the First Consul] as more than a legitimate inference from the rejection by the Senate of the second article, and that he is disposed to go on with the measures due under the compact to the French Republic.”—Doc. 102, No. 446.

And Mr. Madison, Secretary of State, in his instructions to Mr. Charles Pinckney, our Minister to Spain, dated February 6, 1804, says:

“The claims from which France was released [under the Convention of 1800] were admitted by France, and the release was for a valuable consideration in a corresponding

release of the United States from certain claims on them. The claims we make on Spain were never admitted by France, nor made on France by the United States; they made, therefore, no part of the *bargain* with her, [Spain,] and could not be included in the release." Doc. 102, No. 506.

On the 26th May, 1826, President John Q. Adams adopted, and submitted to the Senate, a report of the Secretary of State, Mr. Clay—accompanied with a mass of documents, herein referred to as document No. 102—in which Mr. Clay says:

* * * The French ratification being thus conditional was nevertheless changed against that of the United States, at Paris, on the same 31st of July, 1801. The President of the United States considering it necessary again to submit the Convention, in this State, to the Senate, on the 19th of December, 1801, it was resolved by the Senate that they considered the Convention as fully ratified, and returned it to the President for the usual promulgation. It was accordingly promulgated, and thereafter regarded as a valid and binding compact. The two contracting parties thus agreed by the retrenchment of the second article, mutually to renounce the respective pretensions which were the object of that article. The *pretensions* of the United States, to which allusion is thus made, arose out of the spoliation, under color of French authority, in contravention to law and existing treaties. Those of France sprung from the treaty of Alliance of the 6th February, 1778, the treaty of Amity and Commerce of the same date, and the [Consular] Convention of November 14, 1788. Whatever obligations or indemnities from those sources either party had a right to demand, were respectively waived and abandoned, and the consideration which induced one party to renounce his pretensions was that of the renunciation by the other party of his pretensions. What was the value of the obligations and indemnities so reciprocally renounced, can only be a matter of speculation. The amount of the indemnities due to citizens of the United States was very large, and on the other hand, the obligation was great (to specify no other French pretensions) under which the United States were placed in the 11th article of the treaty of Alliance of the 6th of February, 1778, by which they were bound *forever* to guarantee from that time the then possessions of the Crown of France in America, as well as those which it might acquire by the future treaty of peace with Great Britain; all these possessions having been, it is believed were conquered at, or not long after, the exchange of ratifications of the Convention of September, 1800, by the arms of Great Britain, from France.

The fifth article of the amendments to the Constitution provide "Nor shall private property be taken for public use without just compensation." If the indemnities to which citizens of the United States were entitled for French spoliation, prior to the 30th September, 1800, have been appropriated to absolve the United States from the fulfilment of an obligation which they had contracted, or from the payment of indemnities which they were bound to make to France, the Senate is most competent to determine how far such an appropriation is a public use of private property, within the spirit of the Constitution, and whether equitable considerations do not require some compensation to be made to the claimants."—Doc. 102, page 7.

Copy of a letter from Ex-President John Adams to James H. Causten, dated Quincy, May 9, 1823.

"I have received your letter of 26th April. You are entirely mistaken in supposing that the second article of the Convention with France of 1800 was stricken out at my desire or information. On the contrary, I was desirous of retaining it; so much so that I sent a message to the Senate, and explicitly told them it would have been more agreeable to my inclination to have ratified the Convention as it stood.

* * "To explain all the mysteries of that period never was, and never will be in my power. It would require volumes to give a simple history of it. All I can say of it is, there was war between St. Dennis and St. George. Each had an army in America, constantly skirmishing with each other, and both of them constantly stabbing me with lances, spikes, and spears. My sole object was to preserve the peace and neutrality of the country, and that, I thank God, I obtained, at the loss of my power and fame with both sides."

Copy of a letter from ex-Senator William C. Preston to James H. Causton, dated Columbia, South Carolina, January 29, 1844:

"I have this moment received your letter of the 21st instant, inquiring of me concerning Judge Marshall's opinions on the claims for French spoliations anterior to 1800.

"When that subject was under consideration in the Senate some years since, as a member of the committee to which it had been given in charge, I bestowed no little pains in the investigation of it, and, as I believe it will happen to every one that does so, I became thoroughly satisfied of the justness of the claims. While they were under discussion in the Senate they happened to be the subject of conversation between Mr. Leigh, Mr. Calhoun and myself, one evening * in our mess parlor, when Judge Marshall stepped in, and having overheard or been informed of the subject of the conversation, asked to share in it, saying that, having been connected with the events of that period, and conversant with the circumstances under which the claims arose, [he was one of the Envoys to France in 1797, and Secretary of State when the convention of 1800 was finally ratified,] he was, from his own knowledge, satisfied that there was the strongest obligation on the Government to compensate the suffering by the French spoliations. He gave a succinct statement of the leading facts, and the principles of law applicable to them, in so precise and lucid a way that it seemed to me a termination of the argument by a judicial decision. It was apparent from his manner that he felt an interest in the inculcation of his opinion, arising from deep conviction of its truth. I most heartily desire that the long delayed and very inadequate justice now proposed to these unfortunate claimants will be made this session."

Extract of a letter from ex-Secretary of State, Timothy Pickens, to James H. Causton, dated Salem, November 19, 1824, which, after stating the early proceeding *seriatim*, concludes as follows:

"Thus the Government *bartered* the just claims of our merchants to obtain a relinquishment of the French claim for a restoration of the old treaties, especially the burdensome treaty of Alliance, by which we were bound to guarantee to France her West India territories in America. In this view of the case it would seem that the merchants have an equitable claim for indemnity from the United States."

Notwithstanding the great length of the recorded proceedings in the Corps Legislatif at Paris, on the final ratification of the

* The visit here referred to took place on the evening of the very day on which a bill for the relief of the French spoliation claimants had been discussed in the Senate throughout the entire day, in the presence of Chief Justice Marshall, who had, to the surprise of the whole Senate, spent the whole day sitting in attentively listening to the several elaborate speeches on said bill, more particularly on Mr. Calhoun's speech in opposition, all the pros and cons being freely canvassed.

The meeting in the evening and the conference with Judge Marshall, as stated in Senator Preston's letter, was fully confirmed by Mr. Lambert, late Mayor of Richmond, who was present at the meeting, and who communicated its proceedings to the writer of this note on the following morning, adding, however, that Judge Marshall stated that the object of his visit was to correct Mr. Calhoun as to the facts set forth in his said opposition speech; and that then followed the lucid explanation of the Judge, as stated by Mr. Preston.

Subsequently, Senator John M. Clayton wrote to Senator B. W. Leigh, who was present on that evening, but was then at Richmond, requesting him to state his recollection of what took place at said meeting, and in answer thereto, Mr. Leigh replied, viz:

"I have then to state that the late Chief Justice Marshall did, in a conversation with me and some two or three others, while a bill was before the Senate for the payment of the claims for French spoliation prior to 1800, express an opinion, distinctly and positively, that the United States ought to make provision for the payment of these claims; and the opinion made the more impression on my mind since it was contrary to an idea which I had taken up on the subject, and it determined me to examine it with greater care and discrimination than I had before given to it. You may make what use of this letter you please.

"The President's veto of this claim appeared to me very strange. Is a President authorized to veto every bill for which he himself would not vote? If he is, he is the whole Legislature whenever there is not a majority of two-thirds of both Houses of Congress.

"To the Hon. John M. Clayton."

B. W. LEIGH.

convention of 1800, it is proper to give some notice of it here, viz:

"In 1792, when war broke out between France and England, the United States found themselves embarrassed between their engagements towards the one, and the power of the other. Difficulties sprang up as to the interpretation of the treaties; discussions became embittered by the crimination on one side and the other, which the distance and difficulty of communication did not permit of being dissipated. A treaty of Amity and Commerce, concluded during these circumstances, between the United States and England, was regarded by France as a proof of partiality in favor of her enemy. The commercial agents of the Republic gave rise to and excited some irritation; the commerce of the United States was disturbed by French privateers; several captures, to their injury, followed; the American Congress then believed itself at liberty to declare the United States *exonerated from the treaties which united them to France*; they broke off their relations with her; they granted letters of marque against her armed vessels in the colonies; and the encounters at sea between the vessels of the two nations soon announced that the reconciliation should be hastened if it was desired that it should not become very difficult. Such was the state of things when three American negotiators arrived at Paris, led thither by the desire and the hope of preventing a signal rupture.

"American commerce was alleged to have suffered considerable losses—the negotiators demanded indemnity for them.

"The French Government had also to allege claims for her commerce, which had suffered for a long time; it recognized that it was just to liquidate, compensate and close, if it were possible, the indemnities which might be respectively due; but it put forth as a condition to any stipulation on this subject, that the former treaties between France and the United States should be previously recognized, considering that indemnities could only be an acknowledgment of uninterrupted friendship between the two States; a disavowal of all the violences which might have grown out of a simple misunderstanding; a sort of protest against everything which might have announced a hostile intention; a new assurance of fidelity to the old Conventions; in a word, considering that indemnities could be only the execution of the old treaties, and not the preliminary of a new one, since avowing their annihilation would have been avowing war, and imposing on that one of the two nations which would have to pay the other a balance of indemnity, the shameful obligation of purchasing peace.

"The American negotiators considered themselves bound by the act of Congress which had declared the treaties null, and decided that it was impossible that they could recognize them. It consequently became necessary to adjourn the respective pretensions, and to regulate by new stipulations the relations of Amity and Commerce which the negotiation was to re-establish. Such has been the object of the Convention concluded at Paris on the 30th of September, 1800, which is now presented to the Corps Legislatif.

* * * "Such was moreover the confidence of the two nations in the formation of the treaty, such was their eagerness for a prompt reconciliation, that the first stipulation agreed upon between the negotiators was the cessation of all hostility, from the signature even of the Convention, and without waiting for its ratification on the part of either, this article has been faithfully executed on the part of both. The reservation of opening ulterior negotiations relative to the treaties and indemnities has been consigned in the second article, of which it is the sole object. But the fear of awakening lively discussions, and of viewing any alteration in the good harmony which ought to be the happy result of the other stipulations, has caused the second article to be suppressed in the acts of ratification. This suppression is a prudent and amicable renunciation of the respective pretensions which were expressed in the article."

The above exposition was made by citizen Roderer, who, with Joseph Bonaparte and C. P. Claret Fleurieu composed the Commission on the part of France, to confer with the American Commissioners, Messrs. Ellsworth, Davie and Murray, in 1800.

And at the same session of the Corps Legislatif, P. A. Adet (late French Minister to the United States, in 1796) made the following Report :

Ektrakt. * * * "In consequence of this bill [the Act of Congress nullifying the old treaties] the American Government suspended the commercial relations of the United States with France, and gave to privateers permission to attack the armed vessels of the Republic. The national frigates were ordered to seek them and to fight them. A French frigate and sloop of war, successively and unexpectedly attacked by the Americans, were obliged to yield to force, and the French flag (strange versatility of human affairs) was dragged, humiliated, before the same people who, a little while ago, with eager shouts, had applauded its triumph.

"Twas getting past recovery. War would have broken out between America and France if the Directory, changing its system and following the counsel of prudence, had not opposed moderation to the unmeasured conduct of the President of the United States." * * *

There is another French authority in full accordance with the above, and alike worthy of confidence, viz: Napolaon Bonaparte, who as First Consul signed the Convention of September 30, 1800, but subsequently prescribed and ratified it with the second article erased; when at St. Helena, many years after the completion of the Convention, in dictating to General Gourg and for history, and so published, as the events of his ~~career~~ as First Consul declared—

Second "That the suppression of the ~~second~~ article of the Convention at once put an end to the privileges which France has possessed by the treaties of 1778, and annulled the just claims which America might have made for injuries done in time of peace."

Immediately after the final ratification of said Convention, the owners of the vessels captured by the French, and whose claims were, without their consent or knowledge, bartered to France for the public use, demanded indemnity therefor from the Government of the United States under the all-controlling provisions of our Constitution; to their memorials to Congress for relief, the original sufferers being long since dead, other memorials of the successors, executors, administrators, and heirs, have since increased the number now on the files of Congress to nearly four thousand.

The first object of these memorials has not been regarded with indifference or neglect by Congress.

The Senate, by resolution of March 5, 1834, requested the President to lay before the Senate —

"Copies of the several instructions to the Ministers of the United States to the Government of France, and of the correspondence between the said ministers and Government having reference to the spoliations committed by that power on the commerce of the United States anterior to the 30th of September, 1800; * * also, how far, if at all, the claim of indemnity from the Government of France, for the spoliations aforesaid, was affected by the Convention entered into between the United States and France, on the said 30th of September, 1800"—Doc. 102, page 102.

This resolution was carried into effect by President John Quincy Adams, who, on the 20th of May, 1826, by message to the

Senate, presented the Report of the Secretary of State, Mr. Clay, the material portion of which is set forth on the 17th page of this statement, and a full copy will be found at—Doc. 102, page 5.

The mass of documents thus brought to light, where they had slept in the secret archives of the State Department undisturbed for more than a quarter of a century—alike wholly unknown to the claimants and to the then Congress, at once opened a flood of light, for the first time, on the subject of these claims. Since then forty reports of Committees of the two Houses have been made, each and all of them fully in favor of the Memorialists, accompanied each with a bill for five millions of dollars, as due indemnity—being a forced compromise. The last report by Senator Sumner is of distinguished ability and wisdom, from the Committee of Foreign Affairs, on the 4th April, 1864, with a bill of relief also, to the extent of five millions of dollars; that bill to this day has remained on the calendar of the Senate unacted upon, solely by reason of our protracted rebellion, impeachment of President Johnson, and other absorbing public matters of pressing and indispensable necessity; the bill last mentioned, however, Mr. Sumner's, will be urged to completion, and no doubt successfully, at the approaching session on the 4th of March next.

The Senate heretofore voted bills so reported eight times and the House of Representatives twice. But neither House, when the subject was brought before them, ever voted against either of the bills so reported, as they were found irresistably based on the facts disclosed by the correspondence with France, before mentioned.

The question will naturally arise, and perhaps, as will be stated here, for the information of the reader, viz: Why are these several bills restricted to five millions of dollars, while the best attainable estimate of the aggregate principal of the claims range somewhere between eight and thirteen millions?

The only answer is, that it is a ~~forced~~ compromise prescribed by Congress *ex parte*. *forced*

And although the claimants never asked for or contemplated a compromise, yet they have not opposed this inadequate sum, lest it might further delay relief, of which their aged suffering associates were in great need; hence their humane and manly silence on that point.

Nevertheless, there remains another view of the subject that should not be passed over.

The claimants have asked for indemnity *in general* without specification of amount, but for whatever amount should be found justly due them; not doubting that the great law of the Constitution that binds all parties, would be faithfully administered to them, "nor shall private property be taken for the public use without *just* compensation."

Now, no one will pretend that this forced compromise is a *just* compensation; therefore, neither Congress or the claimants can morally or legally be bound by it. And on the other hand, Congress might find it inconvenient to assume the entire obligation of the principal and seventy years interest during the present burden of taxation and great public debt.

But as the claims can be paid without money in hand, by a simple mode that would satisfy both parties and harmonize with the constitutional provision, it is worthy, perhaps, of consideration, viz:

Let the capital of the claims, or capital and interest be ascertained, and the whole covered by scrip bearing three or four per cent. per annum, and redeemable at the pleasure of the Government, or when the last gun has been fired.

The reader will please exemplify this suggestion according to his own taste or judgment. There exists no authority to make it, but it is believed that such a proposition, if made by Congress, would be acceptable to the claimants.

Between the years 1827 and 1846 twenty-two reports of committees, all in favor of the claimants, had been made in the two Houses of Congress, each by a bill, and each bill for five million dollars indemnity. The last of said bills was a Senate bill, and confirmed by the House, and of course sent to the President, Mr. Polk, who returned it with his veto on the 10th of August, 1846, being the last day, and near the last hour of the session, and when many of the friends of the bill had left the capital and the city. On the veto being submitted to the Senate, on the question "shall the bill pass?" the vote was 27 yeas, 15 nays; not two thirds, so the bill was lost. One additional yea would have produced the required two thirds, and thus passed the bill into a law, as the 27 and 15 votes—42, of which 28 would be two-thirds. The large majority of yeas, however, shows that no importance was given to the veto. But the bill was lost.

With respect to the veto, being the first private bill ever vetoed, but little need be said, since the first paragraph of the message discloses that the President knew not of or disregarded the merits of the claims, he says :

"In attempting to give to the bill the careful examination it requires, difficulties presented themselves in the outset from the remoteness of the period to which the claims belong, the complicated nature of the transactions in which they originated, and the protracted negotiations to which they led between France and the United States. The short time intervening between the passage of the bill by Congress and the approaching close of the session, as well as the pressure of other official duties, have not permitted me to extend my examination of the subject into its minute details.

The message proceeds—that his predecessors had never recognized these claims ; that he doubted their validity ; that nothing was obtained for the claimants by negotiation, because (being payable in land scrip) it would effect the Treasury receipts from that source, and only benefit speculators ; that it is only a partial payment of a much larger sum, and repudiation of a part thereof, which would be unjust, not payable in the currency known to the Constitution, but in a depreciated medium, not to full amount, there is no surplus in the Treasury, the public debt, the war with Mexico, and finally, that his objections are to the "*inexpediency alone.*"

Hence he will allow nothing, nor one word of sympathy for the losses of the suffering claimants, his fellow citizens.

Disregarding the veto as wholly untenable, at the opening of the following session of Congress, on the 17th of December, 1846, being only four months after the date of the veto, the Senate appointed a committee to resume the consideration of the French spoliation claims, who reported the old bill on the 10th February, 1847, for five million dollars, payable in five per cent. United States stock.

Another like committee of the House reported a like bill on the 4th January, 1848.

Another like committee of the Senate reported a like bill on the 5th February, 1848.

Another like committee of the House reported a like bill on the 14th June, 1850.

Another like committee of the Senate reported a like bill on the 24th January, 1851.

Another like committee of the Senate reported a like bill on the 14th January, 1852.

Another like committee of the Senate reported a like bill on the 17th January, 1854. This bill was voted by the Senate by yeas 26, nays 17.

Another committee of the House reported a like bill on the 4th January, 1855. This bill was voted by the House by yeas 111, nays 77. It was vetoed by President Pierce on 17th February,

1855; and on the question "*shall the bill pass?*" the vote was—yeas 118, nays 86; not two thirds, so the bill was lost.

This veto message, like that of President Polk, is entitled to very little respect, since it also abounds with errors, trifles, and even unfounded facts that are wholly inexcusable; a due respect for his office, however, is not to be overlooked.

The writer of this exposition is informed by high authority that President Pierce was not the writer of said message, that it was written by an officer, then of high rank and now of the lowest grade of mankind, and yet living. And by another authority, no less elevated, that President Pierce himself acknowledged to him that he had made a mistake in making that message—but these are not now material, as the message itself is under consideration.

As it would require a volume to explain the omissions and commissions of errors, to say nothing of the special pleadings, presumptions and assumptions set forth in the message, two or three only of the prominent points need be remarked on. Before doing so, however, it is proper to state in advance, that the writer of the message has, throughout its whole scope, committed the not unusual error in those unfamiliar with the subject, but in this case a blunder so vital as to disqualify the maker from all confidence, viz: of confounding *torts* with *debts*. The *torts* being captures and condemnations, forcible seizure of property, &c., and were confined to the second article of the Convention of 1800; while the *debts* were exclusively confined to the Convention of 1803, that is to say, for contracts, supplies, and such captures (some fifteen or twenty) as the French tribunals had ordered to be restored, but could not be restored in kind as they had been taken to the public use by the French Government, and hence their value was held to be *debts*.

Besides, it would be absurd to say, that the fifteen hundred vessels captured and condemned, and their value bartered to France in 1800, could, by any possibility, be regarded as existing claims in 1803.

That the message has fallen into such absurdity is easily established—bearing in mind that the whole Convention of 1803 is confined to debts; the fifth article thereof contains the following, viz: "*The said fifth article does not comprehend prizes whose condemnation has been or shall be confirmed.*"

The message also states—

"If new facts, not known or not accessible during the administration of Mr. Jefferson, Mr. Madison, or Mr. Monroe, had since been brought to light, or new sources of information discovered, this would greatly relieve the subject of embarrassment. But nothing of this nature has occurred."

It is quite evident that the writer of the message had not seen the volume of correspondence between the United States and France, published by order of the Senate, of 840 pages; the contents of which prior to 1826, had slept in the secret archives of the State Department for more than a quarter of a century, being the only reliable and official history of these claims, yet extant, as to which there is no hazard in saying that neither Mr. Jefferson, Mr. Madison, or Mr. Monroe never saw, or at least, since they were deposited there. And without a close examination of this mass of documents, numbered 102, no man can safely or honestly touch or comprehend the subject.

Without doubt, Mr. Jefferson, Mr. Madison and Mr. Monroe well knew that, immediately after the final ratification of the Convention with France, of 30th September, 1800, that, be it remembered, was three years before the Convention of 1803, existed, the House of Representatives in Congress, of its own consciousness and impulse, proposed an assumption and payment of the identical claims for French Spoliations now under consideration; and without the slightest intimation that France was in any manner or degree responsible for them, as the following extracts from the House Journal of their proceedings will clearly establish.

On the 31st of January, 1803, the Journal states :

"Resolved, That provision ought to be made, by law, to indemnify the citizens of the United States, who, in carrying on a lawful trade to foreign ports, suffered losses by the seizure of their property made by unauthorized French cruisers, or by any French cruiser, without sufficient cause, in violation of the rights of American commerce, during the late war between Great Britain and the French Republic, and whose claims to indemnify against the said Republic were renounced by the United States, by their acceptance of the ratification of the treaty lately made with France."

It is recorded in the House Journal of the 26th December, 1806, that the memorials of sundry merchants, owners of vessels captured by the French, were referred to a committee, consisting of Mr. Eppes, Mr. Clinton, Mr. Tallmage, Mr. Cutts, Mr. Dickson, Mr. Blount, Mr. Fenley and Mr. Tenny; that they do examine the matters thereof, and report the same, with their opinions

thereupon, to the House. And, on the 17th February, 1807, Mr. Marion reported as follows:

efficiency * * * "From a mature consideration of the subject, and from the best judgment your Committee have been able to form on the case, they are of opinion that this Government, by ~~expressing~~ the second article of our Convention with France of the 30th September, 1800, became bound to indemnify the memorialists for their just claims, which they otherwise would rightfully have had on the Government of France, for the spoliations committed on their commerce by the illegal captures by the cruisers and other armed vessels of that Power, in violation of the law of nations, and in breach of treaties then existing between the two nations; which claims they were, by the rejection of the said article of the Convention, forever barred from referring to the Government of France for compensation."

And on the next following day the journal states:

"A motion was made and seconded that the House proceed to take into consideration a motion of the 31st ultimo, for indemnifying the citizens of the United States, who, in carrying on a lawful commerce to foreign ports, have suffered losses by the seizure of their property made by unauthorized French cruisers, or by any French cruiser, without sufficient cause."

It was resolved in the affirmative—yeas 65—nays 26.

The above overture was subsequently lost on account of the following political considerations alone, viz: Mr. Jefferson had been recently elected President on his pledge to repeal the direct taxes which his predecessor had caused to be laid; his party in Congress, being predominant, held to that pledge and did repeal the taxes; whereupon the said overture and the means to carry into effect fell together. But the spirit of just relief remains to this day.

If that overture had produced an appropriation of one hundred and fourteen thousand dollars it would, at six per cent. compound interest annually, have produced, within the intervening sixty-five years, a sum exceeding five millions, as now proposed.

The message continues thus—

"As to claims of citizens of the United States against France, which had been the subject of controversy between the two countries prior to the signature of the Convention of 1800, and the further consideration of which was reserved for a more convenient time, for these claims, and for these only, provision was made in the treaties of 1803, all other claims being expressly excluded by them from their scope and purview."

This is so gross and signally untrue that there is no alternative left from deliberate design to mislead. It does not suffice to say that this declaration is wholly untrue, because it is directly the reverse of the fact. So far from the exclusive *debt* convention of 1803 containing any provision for the relief of our condemned fifteen hundred vessels, they were expressly and emphatically excluded from it in terms that no man can misunderstand, viz:

Article 5 of convention of 1803. "*The said fifth article does not comprehend prizes whose condemnation has been or shall be confirmed.*" The celebrated Talleyrand would have denounced such a bold blunder as worse than a crime.

A still further blunder was made in declaring that these claims were paid; which is at once an admission that they ought to have been paid, and, as it is now shown, that they never were paid, the logical conclusion follows that they ought *now* to be paid.

The only portion of the message that may be assented to declares "that France has honorably discharged herself of all obligation in the premises towards the United States." This is true; but that is not the question. The question at issue is, Has the United States equally and honorably discharged themselves from the obligations due to their own citizens?

But returning to the proceedings of Congress—

In utter disregard of both vetoes, the House appointed a committee on the claims, who reported the old bill on the 3d March, 1857.

Another committee was appointed by the Senate, who reported the old bill on the 4th March, 1858.

This bill was voted—yeas 26, nays 20.

Another committee was appointed by the House, who reported the old bill on the 29th March, 1860.

Another committee was appointed by the Senate, who reported the old bill June 11, 1860.

Another committee was appointed by the Senate, who reported January 13, 1862, and the same each following session down and ending 1871, the subject being rendered inoperative during the rebellion and impeachment of President Johnson.

This last bill is now pending in the Senate. It provides for a Board of Commissioners to audit the claims, whose awards shall be paid by a pro rata of five million dollars as full satisfaction for all the claims. Senator Sumner, as chairman of the Committee on Foreign Affairs, who reported it, accompanied by a report in *extenso* from his own gifted pen, which every person desirous of a clear, full and intelligent knowledge of the subject, should not fail to read, and with full confidence of its fidelity in every respect, over the whole subject.

Not only has Congress thus perseveringly favored the just claims of the memorialists, but the Legislatures of the States of New York, Ohio, Louisiana, Massachusetts, Maine, Connecticut, Delaware, Rhode Island, Maryland, Alabama, Pennsylvania, New Hampshire, Virginia (by House of Delegates) and Arkansas no less earnestly and perseveringly maintained these just claims,

by instructing their Senators and requesting their Representatives in Congress to aid and support the bills hereinbefore mentioned; and several of said States have repeated said instructions again and again.

A single remark may be indulged here, on the point stated in the last message, viz: that these claims have been paid.

That throughout the thorough discussions had on them by Congress within the past half century, by forty different committees of the two Houses, and by a like number of speeches *pro* and *con* by the brightest intellects, and by the Legislatures of fourteen States, yet not one of this mass of respectable and reliable persons, or any other reliable person in private life, has had the boldness, the audacity to say that these claims have been paid.

It is no less due to the memory of President Pierce to add the full belief that that declaration, and other leading points in his message, was interpolated there by an unworthy hand, and thus imposed on the President.

The veto power has been twice exercised on bills passed by both Houses of Congress in this case; that of President Polk was, as is believed, the first veto ever made by any President on a private bill; and he frankly admits therein that it is based on "*inexpediency alone*." And, with equal frankness, President Pierce declares that the bill before him "*involved no violation of the Constitution*."

It may, therefore, with propriety, be asked why the terrific veto power should have been applied against said bills?

There has been much less discussion had—but no reliable conclusion—on the veto power than its great importance justly demands; indeed, it is still an open question, and certainly a very dangerous one, as it is a death blow to any case. It carries with it all the influence of the President into the two Houses of Congress, and, as the majority of the Congress is usually if not always in harmony with the President, so his veto meets a ready confirmation by his political friends—it overrules the great fundamental principle, that the majority shall decide ordinary questions of fact, and substitutes a two-thirds as overruling it. And it is thus exercised without, or with imperfect knowledge of the subject matter of a bill, as is fully admitted in both these instances—that it is utterly impossible for the President to fairly judge of the real merit of any such bill by an imperfect examination of its details.

It is therefore *ex parte* and inopportune, though it kills instantly. Who ever heard of such a veto being overruled by Congress? No despot on earth ever exercised a higher dictatorial arbitrary power.

Nevertheless, the power must of necessity exist, and properly in the hands of the President for the sacred indispensable purpose, and for no other, as a shield to defend the Constitution. Its abuse, therefore, is alone complained of. Perhaps the best authority extant on the veto power is that of Mr. Jefferson, whose whole early efforts and profound judgment in framing our Government, commands our highest respect: he says:

"The negative of the President is the shield provided by the Constitution to protect against the invasion of the Legislature, 1st, the rights of the Executive; 2d, of the Judiciary; 3d, of the States and State Legislatures. * * * It must be added, however, that unless the Presidents mend, on a view of every thing which is urged for and against a bill is tolerably clear that it is unauthorized by the Constitution, [by section 8 of the 1st article of the Constitution, *Congress shall have power "to pay the debts" of the nation,*] if the *pro* and *con* hang so even as to balance his judgment, a just respect for the wisdom of the Legislature would naturally decide the balance in favor of their opinion.

"It is chiefly in cases where they are clearly misled by error, ambition, or interest, that the Constitution has placed a check in the negative of the President."—Jefferson's Works, Vol. 4, p. 527.

The two vetoes made in this case, were not only groundless, but, with all their gross imperfection, were ungraciously thrown back into the faces of the more intelligent Legislatures that had voted the bills after forty consecutive years of examination. And the strangest thing of all is, that the Legislatures did not instantly resent the insult, *and thereby defend the Constitution.*

After all that has been said both herein and elsewhere, both *pro* and *con*, the real merits of the case, when stripped bare of all extraneous appendages, lays in a nut-shell, viz:

The claimants allege, to use the words of both Governments, that they were *robbed* of their property by the French; and that, in seeking for their stolen property, they have traced it into the secret archives of our State Department; and they now ask of Congress to restore it to them. Thus, the whole question at issue is, *Shall that be done?*

JAMES H. CAUSTEN,
in behalf of the Claimants.

WASHINGTON, D. C., *February 17, 1871.*

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